MINORITY MEDIA AND TELECOMMUNICATIONS COUNCIL

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FCC EEO FORFEITURES, 1990 - 1996

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August 26, 1996 */

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Introduction

Broadcast licensees are required to practice nondiscrimination and affirmative action in employment.1/ Discrimination goes to the licensee's basic character qualifications to remain a public trustee; thus, a licensee who discriminates will be denied renewal of its license.2/ Violations of the affirmative action requirements are generally remediable through such means as conditioning a license renewal on the filing of supplemental EEO reports.3/ In exceptionally egregious affirmative action cases, the FCC imposes forfeitures (fines),4/

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1/ 47 CFR §73.2080(a) (nondiscrimination) and 47 CFR §§73.2080(b) and (c) (affirmative action).

2/ See Bilingual Bicultural Coalition on the Mass Media v. FCC, 595 F.2d 621, 630 (D.C. Cir. 1978).

3/ See, e.g., Coast Community College District (KOCE-TV), 11 FCC Rcd 5303 (1996).

4/ See, e.g., Community Communications, Inc. (WTMV-TV), 11 FCC Rcd 5266 (1996).

which, until recently, were calculated through the application of a "base forfeiture" and subsequent application of equitable upward and downward adjustments reflecting the seriousness of the offense and any mitigating evidence.5/ In many forfeiture cases, the FCC also imposes renewals for less than the full term ("short term renewals.")6/

In a pending FCC rulemaking proceeding, the FCC is considering whether to adopt rules implementing a schedule for imposing EEO forfeitures which would generally result in the imposition of somewhat higher forfeitures than those which issue now.7/

Some broadcasters have raised threshold questions, including how high the FCC's forfeitures have been, which types of stations most typically receive forfeitures, and whether the election to impose a short term renewal is correlated with the amount of a forfeiture. This study was conducted under the auspices of the Minority Media and Telecommunications Council (MMTC) to attempt to answer those questions.

5/ See Standards for Assessing Forfeitures for Violations of the Broadcast EEO Rules, 9 FCC Rcd 929 (1994) ("EEO Forfeitures"), vacated in Streamlining Broadcast EEO Rules and Policies, 11 FCC Rcd 5154, 5155 ¶2 (1996) ("Streamlining"). In EEO Forfeitures, the base forfeiture amount was $12,500.

6/ See, e.g., Eastern Carolina Broadcasting Company, Inc., 4 FCC Rcd 1621 (1989). There has been no case in the past decade in which a station was issued a short term renewal but no forfeiture.

7/ Streamlining, supra, 11 FCC Rcd at 5171-76 ¶¶37-48.

Research Questions

1. How much does the FCC fine broadcasters for EEO violations? What is the variation in forfeiture amounts?

2. Do AM, FM, AM-FM or TV stations more commonly receive forfeitures and short term renewals?

3. Do large or small market stations more commonly receive forfeitures and short term renewals?

4. Is there a relationship between the level of a forfeiture and the issuance of a short term renewal?

Methodology

We reviewed the 115 EEO forfeitures issued by the FCC in connection with license renewal applications filed in the radio renewal cycle running from 1988 to 1991 and in the television renewal cycle running from 1991 to 1994.[8/] The decisions were issued between March, 1990 and May, 1996.

Our source for station types and forfeiture amounts was the FCC EEO Branch's forfeiture database. Our source for market size data was the 1990 Census.

A list of the six variables studied and their definitions is provided in Appendix A. Each variable's frequency distribution has been plotted separately; these distributions are provided in Appendix B. Each variable's standard measures of central tendency (mean, median, mode) and variability (standard error, standard deviation, skewness and kurtosis) are given in Appendix C.

8/ The decisions in question were issued through May, 1996; a handful of renewal applications filed during those renewal cycles are still pending. Some of the forfeitures we analyzed were issued pursuant to the FCC's 1994 EEO Forfeitures policy statement; these forfeiture amounts and policies are similar to the new rules proposed in Streamlining. Subsequently, many of the forfeitures issued pursuant to EEO Forfeitures were reduced to conform with the ad hoc forfeiture levels which obtained before EEO Forfeitures was issued. The supplemental decisions reducing some of the forfeitures were not included in our analysis.

A correlation coefficient (r) was measured for each pair of variables. Appendix D lists the variable pairs, their correlation coefficients, the number of cases (stations) for which a comparison of the variable pairs could be made (N), and the probability that an apparent relationship between the paired variables could be attributed to randomness or chance (p). Where p was less than 0.05, a correlation between the variables was inferred.

Results

1. How much does the FCC fine broadcasters for EEO violations? What is the variation in forfeiture amounts?

The median and mode for forfeitures were each $15,000, and the mean forfeiture was $15,029. Thus, the forfeitures were distributed almost precisely on a bell-shaped curve.

The forfeiture amounts ranged from $2,000 (four stations) to $37,500 (one station). Five stations received forfeitures in excess of $30,000 and five stations received forfeitures less than $3,000.

The standard deviation was $8,029, meaning that approximately 68% of the forfeiture amounts would normally fall between $6,993 and $23,063.

Forty-three (37%) of the 115 stations receiving forfeitures also received short term renewals.

2. Do AM, FM, AM-FM or TV stations more commonly receive forfeitures and short term renewals?

Thirteen of the stations receiving forfeitures were AM standalones, twelve were AM standalones, 38 were FM standalones, 48 were AM-FM combinations, and seventeen were television stations. The amount of a forfeiture, and the choice to apply a short term

renewal, were each uncorrelated with whether a station was an AM standalone, an FM standalone, an AM-FM combination, or TV station.

3. Do large or small market stations more commonly receive forfeitures and short term renewals?

The amount of a forfeiture, and the choice to apply a short term renewal, were also each uncorrelated with market size.

4. Is there a relationship between the level of a forfeiture and the issuance of a short term renewal?

The mean forfeiture for the 43 stations issued short term renewals was $20,543, and the mean forfeiture for the 72 stations not issued short term renewals was $11,847. No station issued a forfeiture less than $5,000 received a short term renewal. However, no statistically significant correlation was found between the decision to issue a short term renewal and the amount of a forfeiture.

Conclusions

The almost perfect bell shaped distribution of forfeiture amounts discloses a remarkable even-handedness and consistency in the FCC's forfeiture decisions. Apparently, the FCC considers $15,000 as a normative forfeiture amount. It then applies upward adjustment criteria almost exactly as frequently as it applies downward adjustment criteria in calculating forfeiture levels.

While stations receiving small forfeitures seldom received short term renewals, there is no pattern of stations receiving short term renewals attendant to larger fines. Many stations receiving large fines also received full term renewals. Thus, it appears that the FCC's decision to issue a short term renewal is guided by factors different from those which motivate it to select a forfeiture amount.

The FCC appears neither to favor nor disfavor one type of station (AM, FM, AM-FM or TV) over another in its allocation of forfeiture amounts and in its decisions on whether to issue short term renewals. Nor is the FCC favoring or disfavoring small or large market stations in rendering these decisions.

Nothing intrinsic in a station's status as AM, FM, AM-FM, TV, large market or small market renders it more or less likely that the station would violate EEO requirements. Thus, the fact that these characteristics were uncorrelated with the FCC's choices of sanctions demonstrates that the FCC has not unconsciously targeted particular types of stations for higher or lower forfeitures or for short term renewals.

The FCC's range of forfeitures is modest, bell shaped and almost entirely bereft of skew either upward or downward from the mean. Thus, the FCC's application of upward and downward adjustments appears to be evenhanded and well within its administrative discretion.

It follows that public debate on the question of forfeiture amounts should focus largely on the appropriateness of the normative forfeiture amount relative to the normative forfeitures for non-EEO violations, rather than on the FCC's discretionary and apparently unassailably even-handed administration of its forfeiture policies.

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APPENDIX A

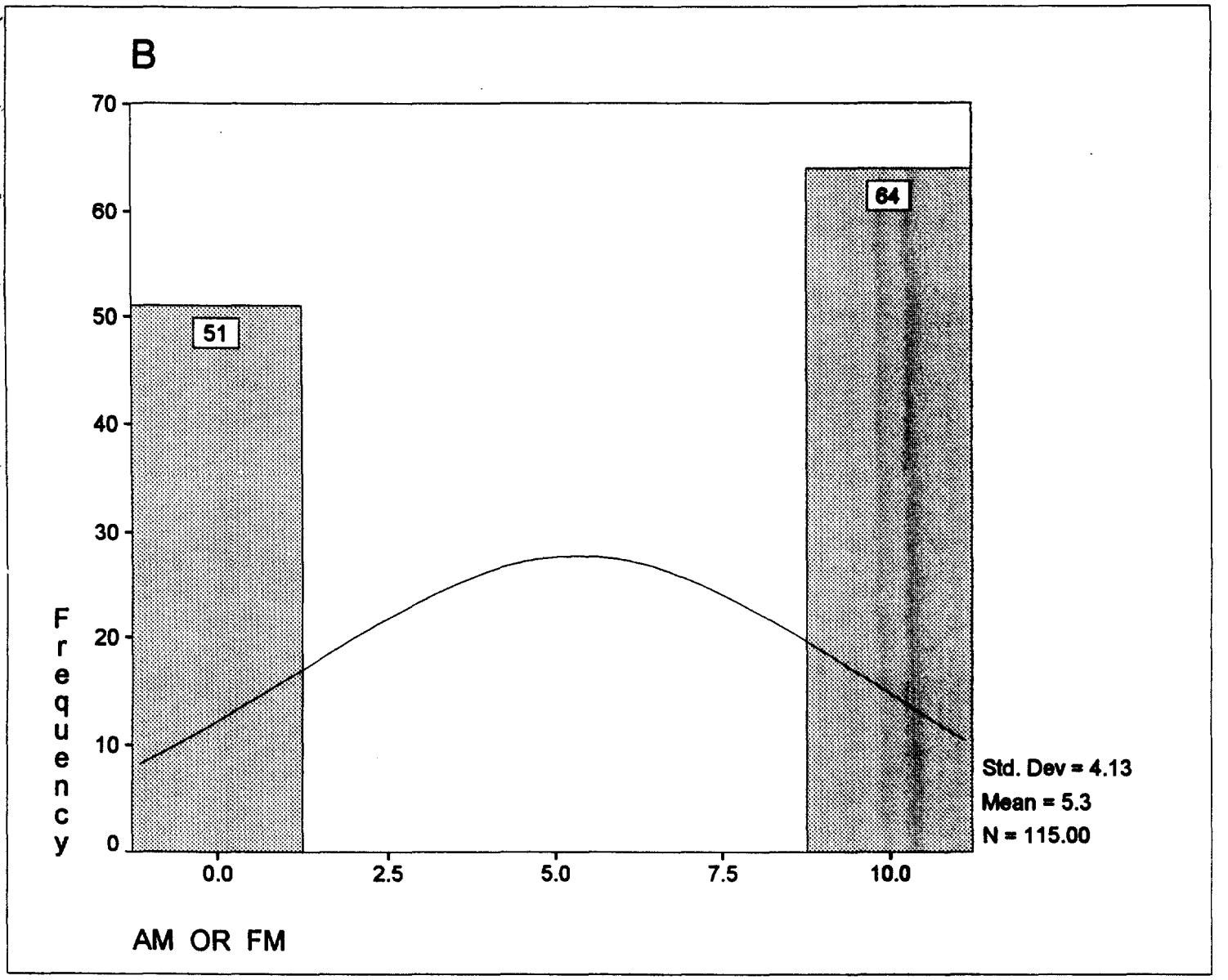
Appendix A

Variables Analyzed for "FCC EEO Forfeitures, 1990 - 1996"

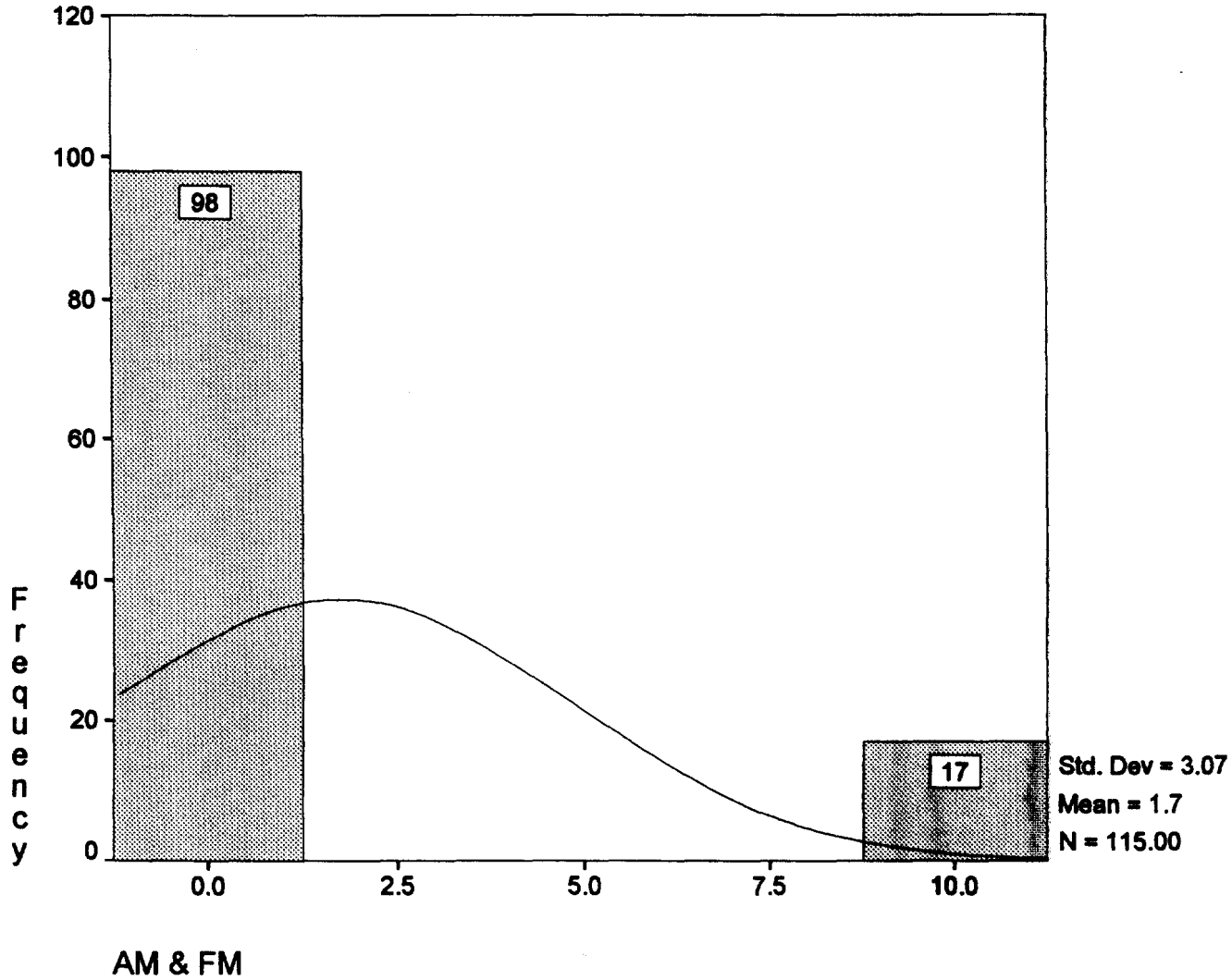
This table lists each variable studied, the letter we assigned to it, and the method and units used to measure it. The variable named A is a station identifier and thus was not included in the Table.

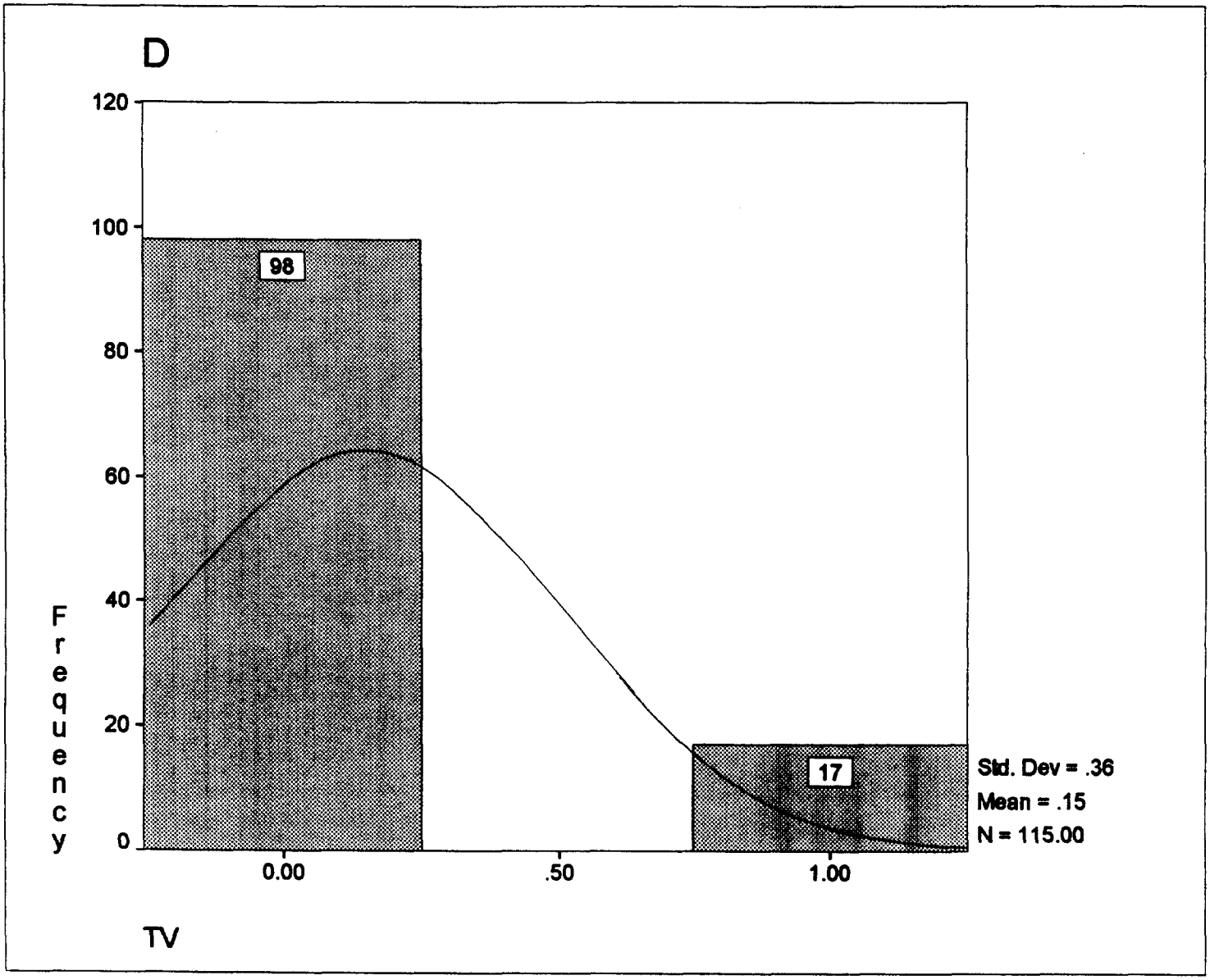
Variable Name and Description		Measurement or Scale of Variable
B	AM or FM	0 is AM standalone, 1 is FM standalone
C	AM and FM	0 is AM standalone or FM standalone, 1 is AM-FM combination
D	Radio or TV	0 is radio, 1 is TV
E	Forfeiture Amount	Dollar amount ranging from $2,000 to $37,500
F	Short Term Renewal	1 is short term renewal, 2 is no short term renewal
G:	Market Size	Number of persons, drawn from the 1990 Census, for the MSA in which the station is located, or, if the station is not in an MSA, for the county in which the station is located (following FCC market definition practice)

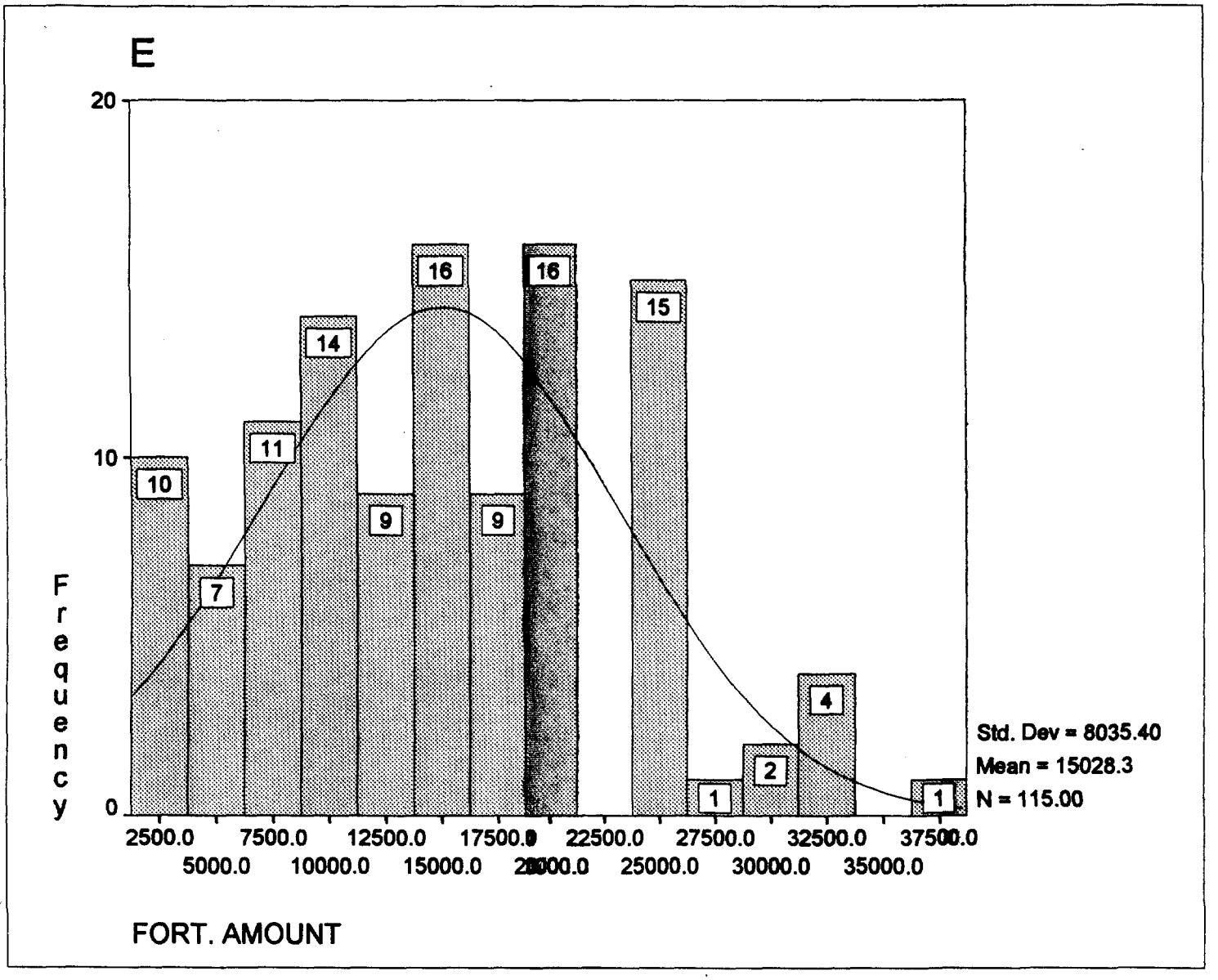
APPENDIX B

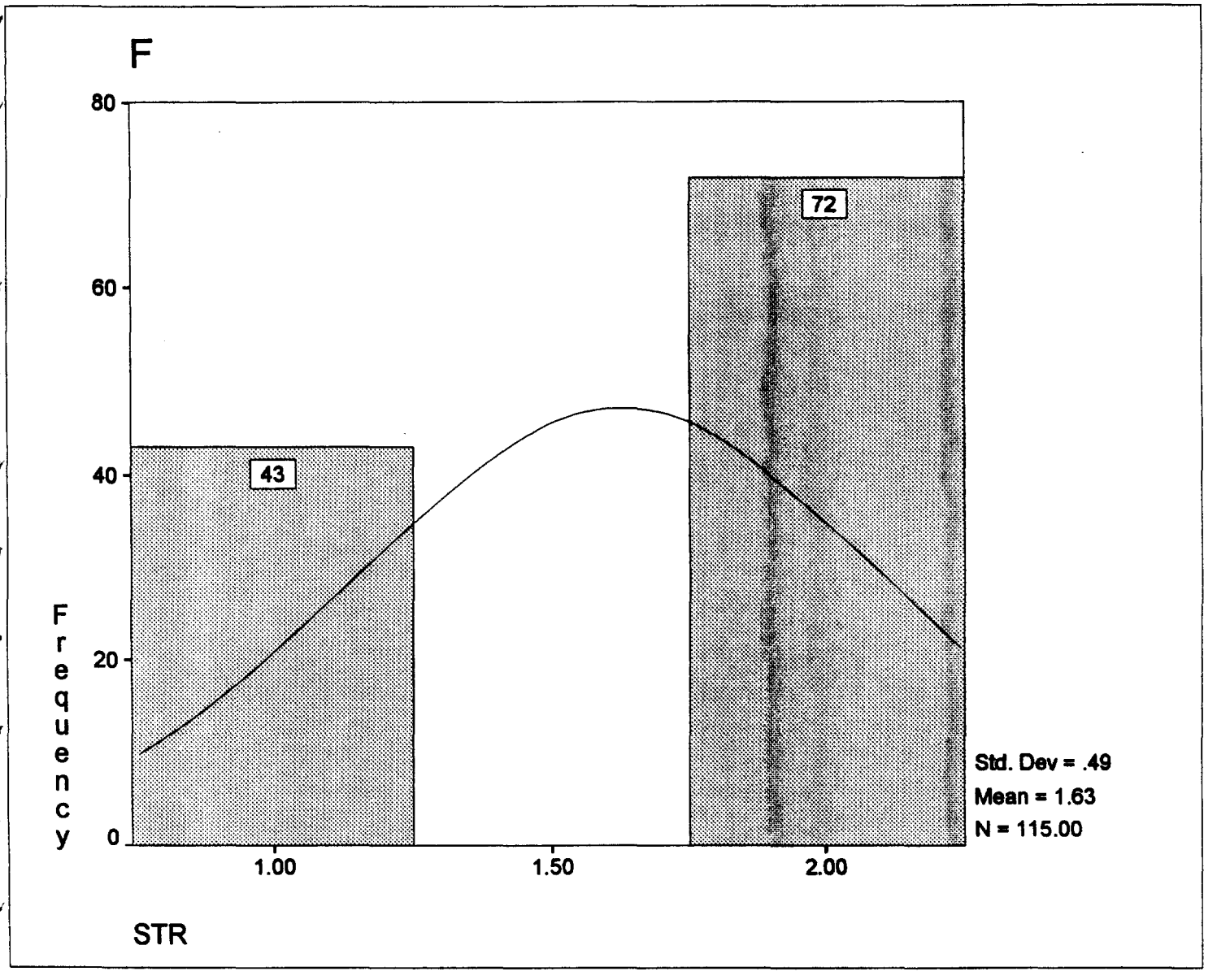

B
70
60
50
40
30
20
10
0
Frequency
51
64
0.0
2.5
5.0
7.5
10.0
AM OR FM
Std. Dev = 4.13
Mean = 5.3
N = 115.00

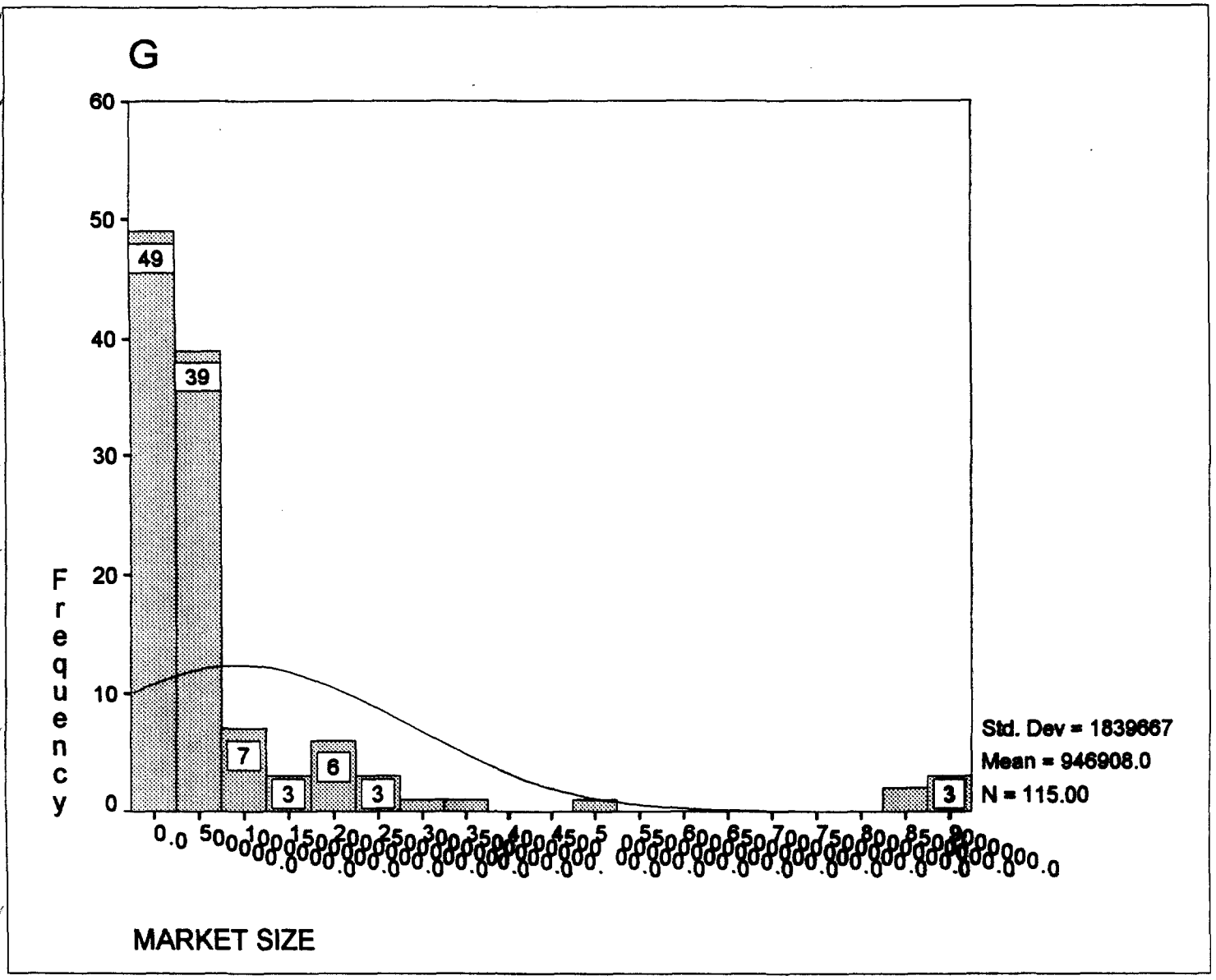
C


120
100
80
60
40
20
0
Frequency
98
17
Std. Dev = 3.07
Mean = 1.7
N = 115.00
0.0
2.5
5.0
7.5
10.0
AM & FM


D
120
100
80
60
40
20
0
Frequency
98
17
0.00
.50
1.00
TV
Std. Dev = .36
Mean = .15
N = 115.00


E
20
10
0
Frequency
10
7
11
14
16
9
16
9
15
1
2
4
1
2500.0
5000.0
7500.0
10000.0
12500.0
15000.0
17500.0
20000.0
22500.0
25000.0
27500.0
30000.0
32500.0
35000.0
37500.0
Std. Dev = 8035.40
Mean = 15028.3
N = 115.00
FORT. AMOUNT


F
80
60
40
20
0
Frequency
43
72
1.00
1.50
2.00
STR
Std. Dev = .49
Mean = 1.63
N = 115.00


G
60
50
40
30
20
10
0
Frequency
49
39
7
3
6
3
3
Std. Dev = 1839667
Mean = 946908.0
N = 115.00
0.0
MARKET SIZE

APPENDIX C

B AM OR FM

Value Label	Value	Frequency	Percent	Valid Percent	Cum Percent
AM	.00	13	11.3	11.3	11.3
FM	1.00	38	33.0	33.0	44.3
OTHER	9.00	64	55.7	55.7	100.0
	Total	115	100.0	100.0	

Hi-Res Chart # 1:Histogram of am or fm

Mean	5.339	Std err	.385	Median	9.000
Mode	9.000	Std dev	4.129	Kurtosis	-1.951
S E Kurt	.447	Skewness	-.246	S E Skew	.226
Minimum	.000	Maximum	9.000		

Valid cases 115 Missing cases 0

- -

C AM & FM

Value Label	Value	Frequency	Percent	Valid Percent	Cum Percent
AM OR FM	.00	50	43.5	43.5	43.5
AM & FM	1.00	48	41.7	41.7	85.2
TV	9.00	17	14.8	14.8	100.0
	Total	115	100.0	100.0	

Hi-Res Chart # 2:Histogram of am & fm

Mean	1.748	Std err	.286	Median	1.000
Mode	.000	Std dev	3.069	Kurtosis	1.871
S E Kurt	.447	Skewness	1.914	S E Skew	.226
Minimum	.000	Maximum	9.000		

Valid cases 115 Missing cases 0

D TV

Value Label	Value	Frequency	Percent	Valid Percent	Cum Percent
RADIO	.00	98	85.2	85.2	85.2
TV	1.00	17	14.8	14.8	100.0
	Total	115	100.0	100.0	

Hi-Res Chart # 3:Histogram of tv

Mean	.148	Std err	.033	Median	.000
Mode	.000	Std dev	.356	Kurtosis	2.079
S E Kurt	.447	Skewness	2.011	S E Skew	.226
Minimum	.000	Maximum	1.000		

Valid cases 115 Missing cases 0

20 Aug 96 Forfeiture Data Analysis

- - Correlation Coefficients - -

	B	C	D	E	F	G
B	1.0000 P= .	.5005 P= .000	.3644 P= .000	.1691 P= .071	-.1670 P= .074	-.1613 P= .085
C	.5005 P= .000	1.0000 P= .	.9885 P= .000	.0838 P= .373	.1303 P= .165	-.0460 P= .625
D	.3644 P= .000	.9885 P= .000	1.0000 P= .	.0605 P= .520	.1700 P= .069	-.0214 P= .820
E	.1691 P= .071	.0838 P= .373	.0605 P= .520	1.0000 P= .	-.5145 P= .000	.1913 P= .041
F	-.1670 P= .074	.1303 P= .165	.1700 P= .069	-.5145 P= .000	1.0000 P= .	.1516 P= .106
G	-.1613 P= .085	-.0460 P= .625	-.0214 P= .820	.1913 P= .041	.1516 P= .106	1.0000 P= .

(Coefficient / N = 115 / 2-tailed Significance)

" . " is printed if a coefficient cannot be computed

E FORT. AMOUNT

Value Label	Value	Frequency	Percent	Valid Percent	Cum Percent
	2000.0000	4	3.5	3.5	3.5
	2500.0000	1	.9	.9	4.3
	3000.0000	4	3.5	3.5	7.8
	3500.0000	1	.9	.9	8.7
	4000.0000	1	.9	.9	9.6
	5000.0000	6	5.2	5.2	14.8
	6250.0000	2	1.7	1.7	16.5
	7000.0000	1	.9	.9	17.4
	7500.0000	5	4.3	4.3	21.7
	8000.0000	3	2.6	2.6	24.3
	8750.0000	1	.9	.9	25.2
	9000.0000	1	.9	.9	26.1
	10000.0000	10	8.7	8.7	34.8
	11000.0000	2	1.7	1.7	36.5
	12000.0000	3	2.6	2.6	39.1
	12500.0000	3	2.6	2.6	41.7
	13000.0000	3	2.6	2.6	44.3
	15000.0000	14	12.2	12.2	56.5
	16000.0000	2	1.7	1.7	58.3
	16500.0000	1	.9	.9	59.1
	17500.0000	3	2.6	2.6	61.7
	18000.0000	4	3.5	3.5	65.2
	18500.0000	1	.9	.9	66.1
	18750.0000	9	7.8	7.8	73.9
	20000.0000	7	6.1	6.1	80.0
	23750.0000	1	.9	.9	80.9
	25000.0000	13	11.3	11.3	92.2
	26000.0000	1	.9	.9	93.0
	27500.0000	1	.9	.9	93.9
	30000.0000	2	1.7	1.7	95.7
	31250.0000	4	3.5	3.5	99.1
	37500.0000	1	.9	.9	100.0
	Total	115	100.0	100.0	

Hi-Res Chart # 4:Histogram of fort. amount

Mean	15028.261	Std err	749.305	Median	15000.000
Mode	15000.000	Std dev	8035.404	Kurtosis	-.467
S E Kurt	.447	Skewness	.339	S E Skew	.226
Minimum	2000.000	Maximum	37500.000		

Valid cases 115 Missing cases 0

F STR

Value Label	Value	Frequency	Percent	Valid Percent	Cum Percent
	1.00	43	37.4	37.4	37.4
	2.00	72	62.6	62.6	100.0
	Total	115	100.0	100.0	

Hi-Res Chart # 5:Histogram of str

Mean	1.626	Std err	.045	Median	2.000
Mode	2.000	Std dev	.486	Kurtosis	-1.752
S E Kurt	.447	Skewness	-.528	S E Skew	.226
Minimum	1.000	Maximum	2.000		

Valid cases 115 Missing cases 0

G MARKET SIZE

Value Label	Value	Frequency	Percent	Valid Percent	Cum Percent
	22085.0000	2	1.7	1.7	1.7
	23257.0000	1	.9	.9	2.6
	34998.0000	1	.9	.9	3.5
	41049.0000	1	.9	.9	4.3
	46719.0000	1	.9	.9	5.2
	50917.0000	1	.9	.9	6.1
	51666.0000	1	.9	.9	7.0
	61951.0000	1	.9	.9	7.8
	64343.0000	1	.9	.9	8.7
	73147.0000	1	.9	.9	9.6
	74339.0000	1	.9	.9	10.4
	75981.0000	1	.9	.9	11.3
	84303.0000	1	.9	.9	12.2
	86425.0000	1	.9	.9	13.0
	87194.0000	1	.9	.9	13.9
	87594.0000	1	.9	.9	14.8
	90208.0000	1	.9	.9	15.7
	94097.0000	1	.9	.9	16.5
	95089.0000	1	.9	.9	17.4
	98458.0000	1	.9	.9	18.3
	100900.0000	1	.9	.9	19.1
	104666.0000	1	.9	.9	20.0
	106546.0000	1	.9	.9	20.9
	106611.0000	1	.9	.9	21.7
	112379.0000	1	.9	.9	22.6
	113229.0000	1	.9	.9	23.5
	122378.0000	1	.9	.9	24.3
	126994.0000	1	.9	.9	25.2
	143776.0000	1	.9	.9	26.1
	144053.0000	2	1.7	1.7	27.8
	158983.0000	2	1.7	1.7	29.6
	160976.0000	3	2.6	2.6	32.2
	162431.0000	1	.9	.9	33.0
	165304.0000	1	.9	.9	33.9
	187547.0000	1	.9	.9	34.8
	194833.0000	1	.9	.9	35.7
	217162.0000	2	1.7	1.7	37.4
	220756.0000	1	.9	.9	38.3
	230096.0000	1	.9	.9	39.1
	233598.0000	2	1.7	1.7	40.9
	238912.0000	1	.9	.9	41.7
	248253.0000	1	.9	.9	42.6
	252913.0000	1	.9	.9	43.5
	254667.0000	1	.9	.9	44.3
	255301.0000	1	.9	.9	45.2
	281912.0000	1	.9	.9	46.1
	282937.0000	1	.9	.9	47.0
	295039.0000	1	.9	.9	47.8
	335113.0000	1	.9	.9	48.7
	339172.0000	1	.9	.9	49.6
	340421.0000	1	.9	.9	50.4
	344456.0000	1	.9	.9	51.3
	348428.0000	1	.9	.9	52.2
	355660.0000	1	.9	.9	53.0
	369608.0000	1	.9	.9	53.9
	370712.0000	1	.9	.9	54.8
	378643.0000	1	.9	.9	55.7
	388222.0000	1	.9	.9	56.5
	397014.0000	1	.9	.9	57.4
	398978.0000	1	.9	.9	58.3
	405382.0000	1	.9	.9	59.1

G MARKET SIZE

433210.0000	1	.9	.9	60.0
453331.0000	1	.9	.9	60.9
496938.0000	1	.9	.9	61.7
500631.0000	4	3.5	3.5	65.2
506875.0000	3	2.6	2.6	67.8
513117.0000	1	.9	.9	68.7
529519.0000	1	.9	.9	69.6
618262.0000	1	.9	.9	70.4
640861.0000	1	.9	.9	71.3
659864.0000	1	.9	.9	72.2
666880.0000	1	.9	.9	73.0
708954.0000	1	.9	.9	73.9
735480.0000	1	.9	.9	74.8
741459.0000	2	1.7	1.7	76.5
803732.0000	1	.9	.9	77.4
863518.0000	1	.9	.9	78.3
942091.0000	2	1.7	1.7	80.0
1072227.0000	3	2.6	2.6	82.6
1332053.0000	1	.9	.9	83.5
1336449.0000	1	.9	.9	84.3
1396107.0000	1	.9	.9	85.2
1972961.0000	3	2.6	2.6	87.8
2067959.0000	1	.9	.9	88.7
2082914.0000	1	.9	.9	89.6
2122101.0000	1	.9	.9	90.4
2262043.0000	1	.9	.9	91.3
2498016.0000	2	1.7	1.7	93.0
2870669.0000	1	.9	.9	93.9
3301937.0000	1	.9	.9	94.8
4856881.0000	1	.9	.9	95.7
8546846.0000	2	1.7	1.7	97.4
8863164.0000	3	2.6	2.6	100.0
Total	115	100.0	100.0	

Hi-Res Chart # 6:Histogram of market size

Mean	946908.017	Std err	171549.863	Median	340421.000
Mode	500631.000	Std dev	1839667.33	Kurtosis	12.081
S E Kurt	.447	Skewness	3.485	S E Skew	.226
Minimum	22085.000	Maximum	8863164.00		

Valid cases 115 Missing cases 0

APPENDIX D